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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

OTTER PRODUCTS, LLC,  
  
Plaintiff,

v.

BLUE POINT SOLUTIONS NY LLC;  
MATKAL LLC; YOSEF YOSSI ZAK-  
LIKOWSKI; "JOHN DOES" 1-10; and  
UNKNOWN ENTITIES 1-10;

Defendants.

BLUEPOINT SOLUTIONS NY LLC and  
MATKAL LLC,

Counterclaim Plaintiff,

v.

OTTER PRODUCTS, LLC and TREEFOG  
DEVELOPMENTS, INC., (d/b/a LIFEPROOF)

Counterclaim Defendants.

Case No. 18-cv-05969 (JFB)(GRB)

**TREEFROG DEVELOPMENTS, INC.'S  
ANSWER TO AMENDED  
COUNTERCLAIMS OF DEFENDANTS  
BLUEPOINT SOLUTIONS NY LLC AND  
MATKAL LLC**

Counterclaim Defendant Treefrog Developments, Inc. (d/b/a Lifeproof) (“Lifeproof”), through its attorneys for its Answer to the Amended Counterclaims of defendants Bluepoint Solutions NY LLC and Matkal LLC (hereinafter collectively referred to as “Defendants” or “Counterclaimants”) respectfully alleges as follows:

1. Paragraph 1 makes no formal allegations, to the extent that a response is required, Lifeproof denies all allegations contained herein.

2. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 and, therefore, denies such allegations.

3. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3 and, therefore, denies such allegations.

4. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4 and, therefore, denies such allegations.

5. As to Paragraph 5, Lifeproof denies that “LifeProof is a subsidiary of OtterBox, having been acquired by OtterBox in May 2013” and admits the remaining allegations contained in Paragraph 5.

6. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6 and, therefore, denies such allegations.

7. Lifeproof denies the allegations contained in Paragraph 7.

8. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8 and, therefore, denies such allegations.

9. As to Paragraph, 9, Lifeproof admits that Counterclaimants seek a declaratory judgment but denies the remaining allegations contained in Paragraph 9.

10. As to Paragraph 10, Lifeproof admits that it manufactures products bearing various trademarks but denies having knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 10.

11. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11 and, therefore, denies such allegations.

12. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 12 and, therefore, denies such allegations.

13. As to the allegations contained in Paragraph 13, Lifeproof admits Counterclaimants have purchased products bearing Lifeproof trademarks and resold those Lifeproof products on platforms including the Amazon Marketplace and eBay but denies having knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 13.

14. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14 and, therefore, denies such allegations.

15. Lifeproof denies the allegations contained in Paragraph 15.

16. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 16 and, therefore, denies such allegations.

17. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 17 and, therefore, denies such allegations.

18. Lifeproof denies the allegations contained in Paragraph 18.

19. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 19 and, therefore, denies such allegations.

20. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 20 and, therefore, denies such allegations.

21. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 21 and, therefore, denies such allegations.

22. Lifeproof admits the allegations contained in Paragraph 22.

23. Lifeproof denies the allegations contained in Paragraph 23.

24. Lifeproof admits the allegations contained in Paragraph 24.

25. As to Paragraph 25, this is a summary of a lengthy letter that omits several key allegations and therefore Lifeproof denies the allegations contained in Paragraph 25.

26. As to Paragraph 26, this is a summary of a lengthy letter that omits several key allegations and therefore Lifeproof denies the allegations contained in Paragraph 26.

27. Lifeproof denies the allegations contained in Paragraph 27.

28. As to Paragraph 28, Lifeproof repeats and realleges the above responses contained herein.

29. As to Paragraph 29, Lifeproof admits that Counterclaimants seek a determination of the parties' respective rights and obligations regarding the purchase, distribution, marketing and resale of items bearing Lifeproof trademarks but denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 29 and, therefore, denies such allegations.

30. As to Paragraph 30, Lifeproof admits that an actual controversy has arisen between Counterclaimants and Lifeproof but denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 30 and, therefore, denies such allegations.

31. As to Paragraph 31, Lifeproof admits that Counterclaimants seek a declaration but denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 31 and, therefore, denies such allegations.

32. As to Paragraph 32, Lifeproof repeats and realleges the above responses contained herein.

33. Lifeproof denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 33 and, therefore, denies such allegations.

34. Lifeproof denies the allegations contained in Paragraph 34.

35. Lifeproof denies the allegations contained in Paragraph 35.

36. As to Paragraph 36, Lifeproof repeats and realleges the above responses contained herein.

37. Lifeproof denies the allegations contained in Paragraph 37.

38. Lifeproof denies the allegations contained in Paragraph 38.

39. Lifeproof denies the allegations contained in Paragraph 39.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

40. Defendants have failed to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

41. Defendants' claims are barred by the applicable statute of limitations.

#### **THIRD AFFIRMATIVE DEFENSE**

42. Defendants have failed to plead claims with the requisite particularity.

#### FOURTH AFFIRMATIVE DEFENSE

43. Defendants' claims are barred in this forum because they arise out of the same transaction or occurrence as the claims in a previously-filed, pending action between Lifeproof and Defendants in the United States District Court for Colorado.

#### FIFTH AFFIRMATIVE DEFENSE

44. Defendants' claims are barred by the doctrine of laches.

#### SIXTH AFFIRMATIVE DEFENSE

45. Defendants' claims are barred by estoppel.

#### SEVENTH AFFIRMATIVE DEFENSE

46. Defendants' claims are barred by the doctrine of unclean hands.

#### EIGHTH AFFIRMATIVE DEFENSE

47. Defendants' claims are barred by waiver.

#### NINTH AFFIRMATIVE DEFENSE

48. To the extent Defendants suffered any damages, which Lifeproof expressly denies, Defendants failed to take the steps necessary to mitigate the damages sustained.

TENTH AFFIRMATIVE DEFENSE

49. Lifeproof reserves the right to supplement or amend this answer, including through the addition of further affirmative defenses, based upon the course of discovery and proceedings in this action.

WHEREFORE, it is respectfully requested that Lifeproof be awarded the following:

- I. Defendants' Amended Counterclaim be dismissed in its entirety;
- II. Lifeproof be granted its costs, including attorneys' fees associated with defending the Amended Counterclaim; and
- III. Lifeproof be awarded any such other relief that the Court deems just and proper.

**LEE LAW PLLC**

Dated: March 13, 2019



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